City of Grass Valley
City Council
Agenda Action Sheet

Council Meeting Date:  September 9, 2008     Date Prepared:  August 28, 2008

Prepared by:  Timothy M. Kiser, PE, Public Works Director/City Engineer

Title:  Funding Reimbursement Agreement for Assessment District Formation

Recommended Motion:  That Council 1) authorize the Public Works Director/City Engineer to enter into a Professional Service Agreement (PSA) to provide special counsel legal services with Orrick, Herrington & Sutcliffe, LLP, for the formation of an assessment district and/or landscaping and lighting district (or annexation into an existing district), and 2) to enter into a Funding Reimbursement Agreement (FRA) with the developer of Morgan Ranch West to fund these special counsel legal services.

Agenda:  Consent

Background Information:  As part of the Morgan Ranch West development, the developer was conditioned to create or annex the maintenance and operation of the street lights and storm detention facilities into an assessment and/or landscaping and lighting district. The developer’s engineer has obtained a quote from Orrick, Herrington & Sutcliffe, LLP, to provide special counsel legal services for the formation or annexation of the facilities into a district. In addition, the developer has posted a deposit to cover staff time and is willing to post another deposit for the legal services. It is requested that Council authorize the Public Works Director/City Engineer to enter into a PSA with Orrick, Herrington & Sutcliffe, LLP, and a FRA with the developer of Morgan Ranch West. See attached draft agreements.

Funds Available:  Yes

Reviewed by:  

City Administrator  Community Development  Finance

Action:  

Approved  Approved with Modifications

Denied  Other

Attachment:  PSA with Orrick, Herrington & Sutcliffe, LLP
             FRA with Medler Family 2007 Trust
             MRW Benefit Assessment District File
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THIS AGREEMENT MADE AND ENTERED INTO THIS ____ DAY OF SEPTEMBER, 2008, by and between the CITY OF GRASS VALLEY, hereinafter referred to as "CITY", and ORRICK, HERRINGTON & SUTCLIFFE, LLP, located in SAN FRANCISCO, CA, hereinafter referred to as "CONSULTANT".

W I T N E S S E T H

WHEREAS, the CITY requires qualified professional Annexation and Formation Proceeding Services and related support services, and

WHEREAS, CONSULTANT is duly qualified and has the required experience to provide such services and is willing to perform such services, and

WHEREAS, CITY desires to retain the services of CONSULTANT to perform required professional services;

NOW, THEREFORE, CITY and CONSULTANT in consideration of the mutual covenants herein set forth agree as follows:

1. BASIS OF AGREEMENT. CONSULTANT hereby agrees to provide professional services as an independent contractor for Annexation and Formation Proceeding Services, and related support services, as described in Exhibit "A" entitled "Annexation and Formation Proceedings: Morgan Ranch West Project, City of Grass Valley" attached hereto and by this reference incorporated herein. In exchange, CITY agrees to pay CONSULTANT as set forth in Item 5 below.

2. SERVICES OF CONSULTANT. The professional services required of CONSULTANT under this agreement shall consist of the tasks as described in Exhibit "A", noted above.

CONSULTANT shall employ the customary skills and resources reasonably available to the CONSULTANT in accordance with sound special counsel legal services.

CONSULTANT shall provide the CITY with copies of all documents prepared by CONSULTANT during the course of this PSA as specified in the attached exhibits. All such documents shall become the property of the CITY.

3. AMENDMENTS TO AGREEMENT. All amendments to this agreement must be in writing with written approval by the City Engineer and the authorized agent of the CONSULTANT.

4. TIME OF COMPLETION. CONSULTANT agrees to provide professional services, in accordance with Exhibit "A". Upon receipt of written notice to proceed from the CITY, CONSULTANT shall undertake and complete the work tasks identified in the notice to proceed, in a prompt and timely manner, and within the time period of one year from the date of this agreement.
The Public Works Director/City Engineer may extend the contract for an additional one (1) year.

5. **AMOUNT OF PAYMENT.** As full payment for all services as set forth in Exhibit “A” herein, the CITY shall pay up to a total maximum sum of Seven Thousand Five Hundred Dollars ($7,500) to CONSULTANT. Payment for the CONSULTANT services shall be at the rates and charges as set forth in Exhibit “A”.

CONSULTANT shall not be reimbursed for any additional expenses incurred unless prior written approval is given by the CITY through a fully executed written amendment. CONSULTANT shall not undertake any such work without prior written approval of the CITY.

Not withstanding any other terms of this agreement, no payments shall be made to CONSULTANT until CITY is satisfied that services of such value have been rendered pursuant to this agreement.

6. **PAYMENT SCHEDULE.** Not withstanding any other terms of this agreement, no payments shall be made to CONSULTANT until CITY is satisfied that services of such value have been rendered pursuant to this agreement.

Payments shall be made to CONSULTANT as set forth below. Payment at the hourly rate shall include all vehicles, communication, and other tools and incidental costs, except reproduction costs, required to comply with Exhibit “A” and no other payment shall be allowed. CONSULTANT shall bill CITY not more often than monthly for the work performed that month pursuant to this Agreement. Billing submitted by the CONSULTANT shall be itemized by work activities as defined in Exhibit “A”. All payment requests will be subject to those items identified in Exhibit “A”. The CITY shall review and pay approved charges within 30 days of receipt of the invoice. Each invoice request shall provide a breakdown by staff member hours for work activities identified by task as described in the scope of work.

7. **RECORDS.** CONSULTANT shall maintain at all times complete detailed records with regard to services performed under this agreement in a form acceptable to CITY, and CITY shall have the right to inspect such records at any reasonable time. Notwithstanding any other terms of this agreement, no payments shall be made to CONSULTANT until CITY is satisfied that services of such value have been rendered pursuant to this agreement. All records shall be retained by CONSULTANT for a period of at least three (3) years after the date of final payment to CONSULTANT.

8. **EMPLOYEES OF CONSULTANT.** All persons performing services for CONSULTANT shall be solely employees of CONSULTANT and not employees of CITY. CONSULTANT shall be solely responsible for the salaries and other benefits, including Workers’ Compensation, of all such personnel.

9. **CONFLICT OF INTEREST.** CONSULTANT warrants and covenants that no official or employee of the CITY, nor any business entity which an official of the CITY has an interest, has been employed or retained to solicit or aid in the procuring of this Agreement, nor that any such person will be employed in the performance of this Agreement without immediate divulgence of such fact to the CITY.
10. **Nondiscrimination.** During the performance of this agreement, CONSULTANT shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age (over 40), or sex. CONSULTANT shall insure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination. CONSULTANT shall comply with the provision of the Fair Employment and Housing Act (Government Code Section 12900 et seq.) and the applicable regulations promulgated thereunder (Cal. Code Regs. Tit. 2, § 8107 (1983)). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this agreement by reference and made a part hereof as if set forth in full.

CONSULTANT shall give written notice of its obligation under this clause to labor organizations with which it has a collective bargaining or agreement.

CONSULTANT shall include the non-discrimination and compliance provisions of this clause in all subcontracts to perform work under this agreement.

11. **Hold harmless and indemnification.** Consultant shall indemnify and hold harmless the City, its officers, officials and employees from and against any and all claims, damages, demands, liability, costs, losses and expenses to the extent causes arising out of Consultant’s negligent performance of work hereunder or its negligent failure to comply with any of its obligations contained in the Contract Documents, except such loss or damage which was caused by the active negligence, sole or gross negligence, or willful misconduct of the City or any third party.

As used above, the term CITY means City of Grass Valley, or their officers, agents, employees, and volunteers.

12. **Non-assignability.** This agreement, and the rights and duties hereunder, shall not be assigned in whole or in part without the express written consent of CITY.

13. **Attorneys’ fees.** CONSULTANT and CITY agree, in the event CITY or CONSULTANT prevails in any action, suit, or proceeding commenced by CITY or CONSULTANT to compel the performance of this agreement or to seek damages for breach thereof, that either will pay reasonable attorney’s fees for the other to be awarded and fixed by the Court, and to be taxed as costs and to be included in the judgment therein rendered.

14. **Insurance.** Throughout the time period of this agreement, the CONSULTANT shall provide the following minimum insurance coverages as listed below. Contemporaneous with the signing of this agreement, the CONSULTANT shall file with CITY a Certificate of Insurance, indicating companies acceptable to CITY, with a Best's Rating of no less than A:VII showing. Documentation of such rating acceptable to the CITY shall be provided at the same time Insurance Certificates are submitted.

Prior to execution of this agreement and prior to commencement of any work, the CONSULTANT shall furnish the CITY with original endorsements effecting coverage for all policies required by the Contract. The endorsements shall be signed by a person
authorized by the insurer to bind coverage on its behalf. The endorsements are to be on forms acceptable to the CITY. At the CITY’s discretion, the CITY may require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by this Section. If the CITY requests, the CONSULTANT will furnish one copy of each required policy to the CITY, and additional copies if requested in writing, certified by an authorized representative of the insurer. Approval of the insurance by the CITY shall not relieve or decrease any liability of CONSULTANT.

In the event any policy is canceled prior to the completion of the project and the CONSULTANT does not furnish a new certificate of insurance prior to cancellation, the CITY may obtain the required insurance and deduct the premium(s) from PSA monies due the CONSULTANT.

**Worker's Compensation and Employers Liability Insurance:**

By their signature hereunder, as CONSULTANT, each person signing this agreement on behalf of the CONSULTANT certifies that he or she is aware of the provisions of Section 3700 of the Labor Code which requires every employer to be insured against liability for Workers' Compensation or to undertake self insurance in accordance with the provisions of that Code, and he or she will comply with such provisions before commencing the performance of the work of this PSA.

If such insurance is underwritten by any agency other than State Compensation Fund, such agency shall be a company authorized to do business in the State of California.

Worker's Compensation Insurance shall be provided as required by any applicable law or regulation. Employer's liability insurance shall be provided in amounts not less than:

- **ONE MILLION DOLLARS ($1,000,000)** each accident for bodily injury by accident
- **ONE MILLION DOLLARS ($1,000,000)** policy limit for bodily injury by disease, and
- **ONE MILLION DOLLARS ($1,000,000)** each employee for bodily injury by disease.

If there is an exposure of injury to CONSULTANT'S employees under the U.S. Longshoremen's and Harbor Worker's Compensation Act, the Jones Act, or under laws, regulations, or statutes applicable to maritime employees, coverage shall be included for such injuries or claims.

Each Worker's Compensation policy shall be endorsed with the following specific language:

Cancellation Notice - "This policy shall not be canceled without first giving thirty (30) days' prior written notice to the City of Grass Valley."

CONSULTANT shall require all SUBCONSULTANTS to maintain adequate Workers' Compensation insurance. Certificates of Workers' Compensation shall be filed forthwith with the City upon demand.

**General Liability Insurance:**
CONSULTANT shall maintain Comprehensive General Liability or Commercial General Liability insurance covering all operations by or on behalf of CONSULTANT, providing insurance for bodily injury liability and property damage liability for the limits of liability indicated below and including coverage for:

(1) Contractual liability insuring the obligations assumed by CONSULTANT in this Agreement.

One of the following forms is required:

(1) Comprehensive General Liability;
(2) Commercial General Liability (Occurrence); or
(3) Commercial General Liability (Claims Made).

If CONSULTANT carries a Comprehensive General Liability policy, the limits of liability shall not be less than a Combined Single Limit for bodily injury, property damage, and Personal Injury Liability of:

- ONE MILLION DOLLARS ($1,000,000) each occurrence
- ONE MILLION DOLLARS ($1,000,000) aggregate

If CONSULTANT carries a Commercial General Liability (Occurrence) policy:

(1) The limits of liability shall not be less than:

- ONE MILLION DOLLARS ($1,000,000) each occurrence (combined single limit for bodily injury and property damage)
- ONE MILLION DOLLARS ($1,000,000) Personal Injury Liability
- ONE MILLION DOLLARS ($1,000,000) for Products-Completed Operations
- ONE MILLION DOLLARS ($1,000,000) General Aggregate

(2) If the policy does not have an endorsement providing that the General Aggregate Limit applies separately, or if defense costs are included in the aggregate limits, then the required aggregate limits shall be TWO MILLION DOLLARS ($2,000,000).

Special Claims Made Policy Form Provisions:

CONSULTANT shall not provide a Commercial General Liability (Claims Made) policy without the express prior written consent of CITY, which consent, if given, shall be subject to the following conditions:

(1) The limits of liability shall not be less than:

- ONE MILLION DOLLARS ($1,000,000) each occurrence (combined single limit for bodily injury and property damage)
- ONE MILLION DOLLARS ($1,000,000) aggregate for Products Completed Operations
- ONE MILLION DOLLARS ($1,000,000) General Aggregate
The insurance coverage provided by CONSULTANT shall contain language providing coverage up to six (6) months following the completion of the PSA in order to provide insurance coverage for the hold harmless provisions herein if the policy is a claims made policy.

Conformity of Coverages:

If more than one policy is used to meet the required coverages, such as a separate umbrella policy, such policies shall be consistent with all other applicable policies used to meet these minimum requirements. For example, all polices shall be Occurrence Liability policies or all shall be Claims Made Liability policies, if approved by the City as noted above. In no cases shall the types of policies be different.

Endorsements:

Each Comprehensive or Commercial General Liability policy shall be endorsed with the following specific or similar language:

“Insured: The Entity, its elected or appointed officers, agents, volunteers and employees are included as insureds with regard to liability and defense of suits arising from the operations and activities performed by or on behalf of the named insured.”

“Contribution Not Required: As respects (a) work performed by the Named Insured for or on behalf of the Entity; or (b) products sold by the Named Insured to the entity; or (c) premises leased by the Named Insured from the Entity, the insurance afforded by this policy shall be primary insurance as respects the Entity, its elected or appointed officers, officials, employees or volunteers; or stand in an unbroken chain of coverage excess of the Named Insured’s scheduled underlying primary coverage. In either event, any other insurance maintained by the Entity, its elected or appointed officers, officials, employees or volunteers shall be in excess of this insurance and shall not contribute with it.”

“Cancellation Notice: With respect to the interests of the Entity, this insurance shall not be cancelled, except after thirty (30) days prior written notice by receipted delivery has been given to the Entity.”

“Except as stated above, nothing herein shall be held to waive, alter or extend any of the limits, conditions, agreements or exclusions of the policy to which this endorsement is attached.”

Automobile Liability Insurance

CONSULTANT shall maintain automobile liability insurance covering bodily injury and property damage in an amount no less than ONE MILLION DOLLARS ($1,000,000) combined single limit for each occurrence.

Covered vehicles shall include owned if any, non-owned, and hired automobiles and, trucks.
The endorsements listed above for each Comprehensive or General Liability Policy shall also apply to the Automobile Liability Policy.

**Professional Liability Insurance (Errors & Omissions):**

CONSULTANT shall maintain Professional Liability Insurance for Errors and Omissions coverage in the amount of not less than ONE MILLION DOLLARS ($1,000,000). If the policy does not have an endorsement providing that defense costs are excluded in the aggregate limits, then the required aggregate limits shall be TWO MILLION DOLLARS ($2,000,000).

**Additional Requirements**

Premium Payments: The insurance companies shall have no recourse against the CITY and funding agencies, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by a mutual insurance company.

Policy Deductibles: The CONSULTANT shall be responsible for all deductibles in all of CONSULTANT’s insurance policies. The amount of deductibles for insurance coverage required herein should be reasonable and subject to CITY’s approval.

CONSULTANT’s Obligations: CONSULTANT’s indemnity and other obligations shall not be limited by the foregoing insurance requirements and shall survive the expiration of this agreement.

Material Breach: Failure of the CONSULTANT to maintain the insurance required by this agreement, or to comply with any of the requirements of this section, shall constitute a material breach of the entire agreement.

16. **GENERAL COMPLIANCE WITH LAWS.** The CONSULTANT shall exercise usual and customary care in its efforts to comply with applicable Federal, State and local laws, statutes, rules and regulations that are in effect as of the date of this agreement. CONSULTANT shall comply with all laws regarding payment of prevailing wages, including, without limitation, California Labor Code Section 1720, as such laws may be amended or modified. CONSULTANT agrees to comply with any directives or regulations issued by the California State Department of Industrial Relations or any other regulatory body of competent jurisdiction.

17. **JURISDICTION.** This agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this agreement shall be in that State. Venue shall be Nevada County, California. The parties each waive any federal court removal rights they may have. If any part of this agreement is found to be in conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of this agreement shall be in full force and effect.

18. **USE OF SUBCONSULTANTS.** CONSULTANT shall not use the services of any SUBCONSULTANT other than those included in the Proposal without the written approval by CITY prior to SUBCONSULTANT commencing any work on this project. The SUBCONSULTANT shall comply with all applicable provisions of this PSA, including, but not limited to, providing records, time of completion, payment schedule, etc.
19. **SUSPENSION OR ABANDONMENT WITH OR WITHOUT CAUSE.** CITY may suspend or abandon, by written notice, all or a portion of the work under this agreement for any reason. CONSULTANT may request that all or a portion of the work under this agreement be suspended or abandoned for any reason by notifying CITY in writing. Suspension or abandonment shall only be valid upon receipt of written approval of the request by CITY.

20. **CANCELLATION.** This agreement may be canceled by the City of Grass Valley City Council upon the giving of 30 days advance written notice. Such notice shall be personally served or given by United States Mail.

   In the event of cancellation by CITY, CONSULTANT shall be paid for all work performed and reasonable and un-cancelable expenses to the date of cancellation, unless this cancellation is a result of non-performance by the CONSULTANT, in which case CONSULTANT shall be paid for all work performed to the date of cancellation, less any estimated increased cost in the completion of the scope of services due to such cancellation, but in no event less than zero. Upon such cancellation, the City shall be entitled to all work, including but not limited to, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date.

   In the event of cancellation initiated by the CONSULTANT, CONSULTANT shall be paid for all work performed to the date of cancellation, less any estimated increased cost in the completion of the project due to such cancellation, but in no event less than zero.

21. **COVENANT AGAINST CONTINGENT FEES.** The CONSULTANT warrants that he has not employed or retained any company or person, other than a bona fide employee working for the CONSULTANT, to solicit or secure this agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or formation of this agreement. For breach or violation of this warranty, the CITY shall have the right to annul this agreement without liability, or at its discretion to deduct from the agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

22. **DISPUTES.** All claims, counter-claims, disputes, and other matters in question between CITY and CONSULTANT that cannot be settled by agreement between the parties will be presented to the City Council of CITY for consideration. In the event the City Council cannot resolve the matter or matters to the satisfaction of the parties, either party may undertake whatever legal actions against the other as it deems necessary.

23. **REMEDIES.** In the event of breach of any condition or provision hereof, the CITY shall have the right, by prior written notice to the CONSULTANT, to terminate the employment of the CONSULTANT hereunder and cancel this agreement and have the work thus canceled otherwise performed, without prejudice to any other rights or remedies of the CITY. The CITY shall have the benefit of such work as may have been completed up to the time of such termination or cancellation, and with respect to any part which shall have been delivered to and accepted by the CITY there shall be an equitable adjustment of compensation, which in no event shall exceed the total amount provided in Item 6 hereof.

24. **NOTICES.** All notices, and approvals or demands of any kind required or desired to be given by the CITY and CONSULTANT shall be in writing and shall be deemed served or given upon delivery if personally delivered or faxed, or, if mailed, forty-eight (48) hours
after depositing the notice or demand in the United States mail, certified or registered, postage prepaid to the addresses shown below. CITY and CONSULTANT may from time to time by written notice to the other designate another place for receipt of future notices.

CITY: Timothy M. Kiser, P.E.
City of Grass Valley
Engineering Department
125 East Main Street
Grass Valley, CA 95945
Fax: (530) 274-4399

CONSULTANT: Samuel A. Sperry
Orrick, Herrington & Sutcliffe, LLP
The Orrick Building
405 Howard Street
San Francisco, California 94105-2669
Fax: (415) 773-5759
IN WITNESS WHEREOF, the parties have hereunto set their hands the year and date first above written.

“CITY”
STATE OF CALIFORNIA
CITY OF GRASS VALLEY

By: __________________________
Timothy M. Kiser, PE
City Engineer

Date:_________________________

ATTEST:

By: __________________________
Kristi K. Bashor
City Clerk

Date:_________________________

“CONSULTANT”
Orrick, Herrington & Sutcliffe, LLP

By: __________________________
Officer Signature # 1
(Signature Notarized)

By: __________________________
Print Name and Title
Date:_________________________

By: __________________________
Signature # 2
(Signature Notarized)

By: __________________________
Print Name and Title
Date:_________________________

APPROVED AS TO FORM

By: __________________________
Ruthann G. Ziegler
City Attorney

Date:_________________________

ATTACHMENTS:
Exhibit A - Annexation and Formation Proceedings: Morgan Ranch West Project, City of Grass Valley

*If Contractor is a corporation, PSA must be signed by the following two corporate officers, one from each category: (1) Chairman of the Board, President or any Vice President, and (2), Corporate Secretary, any Assistant Corporate Secretary, Chief Financial Officer or any Treasurer or Assistant Treasurer, unless an authenticated copy of a resolution of the corporation which delegates to a single officer the authority to bind the corporation is attached to this PSA.

If Contractor is another type of business entity, such as a partnership or limited liability company, PSA must be signed by officer(s) possessing legal authority to bind the entity. An authenticated copy of a resolution, partnership agreement, operating agreement or other legal evidence of signature authority must be attached to this PSA.*
FRA NO. _____    CITY OF GRASS VALLEY
ENGINEERING DIVISION

DESCRIPTION: FUNDING/REIMBURSEMENT AGREEMENT (FRA) FOR ANNEXATION AND FORMATION PROCEEDING SERVICES

THIS AGREEMENT MADE AND ENTERED INTO THIS ____ DAY OF SEPTEMBER, 2008, BY AND BETWEEN THE CITY OF GRASS VALLEY, hereinafter referred to as "CITY", and MEDLER FAMILY 2007 TRUST, hereinafter referred to as "APPLICANT".

WITNESSETH

WHEREAS, the APPLICANT requires qualified professional annexation and formation proceeding services and related support services, and

WHEREAS, CITY has a professional service agreement with Orrick, Herrington & Sutcliffe, LLP, and

WHEREAS, as a result of the installation of street lights and detention basins for Tentative Map #01-10 for the Morgan Ranch West development, approved by City Council on March 23, 2004, the subdivider shall form a Landscape and Lighting District or annex to an existing district the maintenance of the street lights on Morgan Ranch Drive and form an Assessment District or annex to an existing district the maintenance of the two detention basins in the Morgan Ranch West development.

NOW, THEREFORE, CITY and APPLICANT in consideration of the mutual covenants herein set forth agree as follows:

1. BASIS OF AGREEMENT. APPLICANT hereby agrees to provide a deposit to CITY for Annexation and Formation Proceeding Services, and related support services, as described in Exhibit "A" entitled "Annexation and Formation Proceedings: Morgan Ranch West Project, City of Grass Valley" attached hereto and by this reference incorporated herein. In exchange, CITY agrees to supply those services as described in Exhibit “A” via the consultant who prepared it.

2. REQUIREMENTS OF CITY. CITY shall contract with the professional consultant to provide the services as described in Exhibit “A”.

   CITY shall provide the APPLICANT with copies of all documents submitted to CITY by the consultant prepared for the project.

5. AMENDMENTS TO AGREEMENT. All amendments to this agreement must be in writing with written approval by the Public Works Director/City Engineer and the authorized agent of the APPLICANT.

6. TIME OF COMPLETION. CITY agrees to provide, through an agreement with the CITY and a consultant, services in accordance with Exhibit “A”. Upon receipt of written notice to proceed from the CITY, the consultant shall undertake and complete the work tasks identified in the notice to proceed, in a prompt and timely manner in accordance with the requirements of this agreement and Exhibit “A” attached hereto and incorporated herein by this reference.

   Applicant may request in writing that CITY end this agreement. CITY shall have two (2) working days to notify consultant to end all work associated with the proposed development.

5. DEPOSIT AND REIMBURSEMENT. APPLICANT agrees to provide a cash deposit (check, cash, or money order) for the cost estimate amount as set forth in Exhibit “A” herein. The CITY shall pay the consultant from the deposit. CITY agrees to supply APPLICANT with copies of all bills supplied by consultant.
APPLICANT shall be reimbursed any remaining deposited funds after completion of all necessary tasks as set forth in Exhibit “A” or after receiving a written request from APPLICANT to end all work as described above.

Notwithstanding any other terms of this agreement, no reimbursements shall be made to APPLICANT until CITY has paid consultant per Exhibit “A” for actual services rendered.

10. RECORDS. CITY shall maintain at all times complete detailed records with regard to services performed under this agreement and APPLICANT shall have the right to inspect such records at any reasonable time. Notwithstanding any other terms of this agreement, no reimbursement payments shall be made to APPLICANT until agreement is completed as described above.

15. HOLD HARMLESS AND INDEMNIFICATION. APPLICANT shall indemnify and hold harmless the CITY, its officers, officials and employees from and against any and all claims, damages, demands, liability, costs, losses and expenses to the extent causes arising out of Applicant’s negligent performance of work hereunder or its negligent failure to comply with any of its obligations contained in this agreement, except such loss or damage which was caused by the active negligence, sole or gross negligence, or willful misconduct of the City or any third party.

As used above, the term CITY means City of Grass Valley, or their officers, agents, employees, and volunteers.

16. NON-ASSIGNABILITY. This agreement, and the rights and duties thereunder, shall not be assigned in whole or in part without the express written consent of CITY.

17. ATTORNEYS’ FEES. APPLICANT and CITY agree, in the event CITY or APPLICANT prevails in any action, suit, or proceeding commenced by CITY or APPLICANT to compel the performance of this agreement or to seek damages for breach thereof, that either will pay reasonable attorney's fees for the other to be awarded and fixed by the Court, and to be taxed as costs and to be included in the judgment therein rendered.

14. JURISDICTION. This agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this agreement shall be in that State. Venue shall be Nevada County, California. The parties each waive any federal court removal rights they may have. If any part of this agreement is found to be in conflict with applicable laws, such part shall be inoperative, null, and void insofar as it is in conflict with said laws, but the remainder of this agreement shall be in full force and effect.

15. SUSPENSION OR ABANDONMENT WITH OR WITHOUT CAUSE. CITY may suspend or abandon, by written notice, all or a portion of this agreement for any reason. APPLICANT may request that all or a portion of the work under this agreement be suspended or abandoned for any reason by notifying CITY in writing. Suspension or abandonment shall only be valid upon receipt of written approval of the request by CITY.

16. CANCELLATION. This agreement may be canceled by the City of Grass Valley upon the giving of 30 days advance written notice. Such notice shall be personally served or given by United States Mail.

In the event of cancellation by CITY, APPLICANT shall be reimbursed any remaining deposited funds. Upon such cancellation, the APPLICANT shall be entitled to all work, including but not limited to, reports, studies, analyses performed to that date.

17. DISPUTES. All claims, counter-claims, disputes, and other matters in question between CITY and APPLICANT that cannot be settled by agreement between the parties will be presented to the City
Council of CITY for consideration. In the event the City Council cannot resolve the matter or matters to the satisfaction of the parties, either party may undertake whatever legal actions against the other as it deems necessary.

18. REMEDIES. In the event of breach of any condition or provision hereof, the CITY shall have the right, by prior written notice to the APPLICANT, to terminate the employment of the APPLICANT hereunder and cancel this agreement and have the work thus canceled otherwise performed, without prejudice to any other rights or remedies of the CITY. The CITY shall have the benefit of such work as may have been completed up to the time of such termination or cancellation, and with respect to any part which shall have been delivered to and accepted by the CITY there shall be an equitable adjustment of compensation, which in no event shall exceed the total amount provided in Item 6 hereof.

19. NOTICES. All notices, and approvals or demands of any kind required or desired to be given by the CITY and APPLICANT shall be in writing and shall be deemed served or given upon delivery if personally delivered or faxed, or, if mailed, forty-eight (48) hours after depositing the notice or demand in the United States mail, certified or registered, postage prepaid to the addresses shown below. CITY and APPLICANT may from time to time by written notice to the other designate another place for receipt of future notices.

CITY: Timothy M. Kiser, P.E.
City of Grass Valley
Engineering Department
125 East Main Street
Grass Valley, CA 95945
Phone: (530)274-4351
Fax: (530) 274-4399

APPLICANT: Medler Family 2007 Trust
Anthony and Paula Medler
3079 Marble Ridge Court
Reno, Nevada 89511
Phone: (775) 742-9960
IN WITNESS WHEREOF, the parties have hereunto set their hands the year and date first above written.

“CITY”
STATE OF CALIFORNIA
CITY OF GRASS VALLEY

By: __________________________
Timothy M. Kiser, PE
Public Works Director/City Engineer

ATTEST:
By: __________________________
Kristi K. Bashor
City Clerk

Date: __________________________

“APPLICANT”
Medler Family 2007 Trust

By: __________________________
Officer Signature # 1
(Signature Notarized)

By: __________________________
Print Name and Title

Date: __________________________

By: __________________________
Signature # 2
(Signature Notarized)

By: __________________________
Print Name and Title

Date: __________________________

APPROVED AS TO FORM

By: __________________________
Ruthann G. Ziegler
City Attorney

Date: __________________________

ATTACHMENTS:
Exhibit A – Annexation and Formation Proceedings: Morgan Ranch West Project, City of Grass Valley

“If Applicant is a corporation, PSA must be signed by the following two corporate officers, one from each category: (1) Chairman of the Board, President or any Vice President, and (2), Corporate Secretary, any Assistant Corporate Secretary, Chief Financial Officer or any Treasurer or Assistant Treasurer, unless an authenticated copy of a resolution of the corporation which delegates to a single officer the authority to bind the corporation is attached to this PSA.

If Applicant is another type of business entity, such as a partnership or limited liability company, PSA must be signed by officer(s) possessing legal authority to bind the entity. An authenticated copy of a resolution, partnership agreement, operating agreement or other legal evidence of signature authority must be attached to this PSA.”